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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,861	02/08/2005	Stan Nowak	ASEFF.0101	6378
7590	08/10/2006		EXAMINER	
Carsten & Cahoon P O Box 802334 Dallas, TX 75380			BURCH, MELODY M	
			ART UNIT	PAPER NUMBER
			3683	

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/511,861	Applicant(s) NOWAK ET AL.	
	Examiner Melody M. Burch	Art Unit 3683	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/20/06 has been entered.

### ***Information Disclosure Statement***

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. Examiner is making particular reference to US Patent 6321882 mentioned on pg. 1 of the specification.

### ***Claim Objections***

3. Claims 1-3, 8-14 are objected to because of the following informalities: the phrase "through circumferential wall" in line 3 from the bottom of claim 1 should be changed to --through the circumferential wall--. Appropriate correction is required. The remaining claims are objected to due to their dependency from claim 1.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 8-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 8. It is unclear to the Examiner whether the "supply of cooling fluid" in line 3 from the bottom of claim 8 is intended to be the same or different from that of claim 1.

Re: claim 14. It is unclear to the Examiner whether the "sealing means" and the "wet brake housing" in lines 1-3 of claim 14 is intended to be the same or different from the seal means of claim 1. The remaining claims are indefinite due to their dependency from claim 8.

The above issues seem to stem from the change of claim 8 from independent to dependent form. This list is not intended to be exhaustive.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 8, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by DE-1160319 (DE'319).

Re: claims 1-3. DE'319 shows in the figure a fluid cooled brake housing 10 for a brake system that includes a rotatable element to be braked, the brake housing comprising at least a casing having a circumferential wall shown between the lead lines of 25 and 30 and two axial end walls one extending above the lead line of 25 and the other extending above the lead line of 30 that define a cavity for housing one or more friction pads 15 of the brake system, a fluid inlet 24 in fluid communication with a fluid flow path shown throughout areas 11 and 13 that is internal to the circumferential wall, and a fluid outlet 29 in fluid communication with the fluid flow path, an opening in the casing shown surrounding element 19 through which a portion of the rotatable element can extend, a seal means 17,32 for sealing the opening such that the casing can be at least partially filled with a volume of lubricating fluid 23 to provide a wet brake housing, and whereby when a supply of cooling fluid is coupled with the fluid inlet, cooling fluid flows through the circumferential wall via the fluid inlet, the fluid flow path and fluid outlet thereby cooling the housing.

Re: claim 14. DE'319 shows the housing further including sealing means 17,32 for sealing the cavity when the housing is mounted on an axle shown supported within elements 20 to provide a wet brake housing.

Re: claims 8 and 11-13. DE'319 shows in the figure a fluid cooled brake system including one or more brake pads 15 disposed in the cavity as shown, braking surface of element 15 located within the cavity as shown, an actuator 12 for selectively moving

the one or more pads into contact with the braking surface, and a supply of cooling fluid external of the cavity and in fluid communication with the fluid inlet and the fluid outlet, whereby the cooling fluid circulates through the supply, the fluid inlet, fluid flow path and fluid outlet.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE'319 in view of US Patent 5445242 to Pogorzelski et al.

Re: claim 9. DE'319 is silent with regards to how the cooling fluid is circulated. Pogorzelski et al. teach in figure 1 a pump 94 for pumping the cooling fluid through the supply and the fluid flow path.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified one of the ends of the fluid inlet of DE'319, to have been connected to a pump, as taught by Pogorzelski et al., in order to provide a means of circulating the cooling fluid through the cooling system in order to effectively prevent overheating of the brake device.

Re: claim 10. DE'319 is silent with regards to a heat exchanger being in fluid communication with the supply for cooling the cooling fluid.

Pogorzelski et al. teach in figure 1 a brake device including a heat exchanger 96 in fluid communication with the supply for cooling the cooling fluid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the cooling system of DE'319 to have included a heat exchanger, as taught by Pogorzelski et al., in order to provide a means of controlling heat dissipation within the system.

### ***Response to Arguments***

10. Applicant's arguments filed 3/20/06 have been fully considered but they are not persuasive. With regards to the circumferential wall limitation, Examiner notes that the fluid flow path incorporates sections of elements 11 and 13 which are internal to the circumferential wall as shown in DE'319 and as broadly recited in the claim. In response to the lubricating fluid vs. cooling fluid argument, Examiner maintains that two different fluids are shown in DE'319 – one type of fluid is found to the left of element 17 (lubricating) and another type of fluid is found within elements 11 and 13 (cooling). Finally, with regards to the sealing of element 32, Examiner maintains that by virtue of its direct connection to the periphery of element 16, element 32 seals or closes the cavity against at least some air passage, for example. The claims do not require that the sealing means be an air-tight seal.

Examiner also notes that claims 4-7 have been withdrawn by Applicant and accordingly withdrawn from further consideration on the merits by Examiner. This voluntary withdrawal will be treated in the same manner as claims withdrawn in an election without traverse.

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on 571-272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb  
August 3, 2006

*Melody M. Burch*  
**Melody M. Burch**  
**Primary Examiner**  
**Art Unit 3683**

8/3/06